***THE HON'BLE SRI JUSTICE V.V.S.RAO**

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+WRIT PETITION Nos.6721, 5947, 6050, 6062, 6417

and 6418 of 2000

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%Dated 02-12-2005

Writ Petition No.6721 of 2000

Hindustan Petroleum Corpn., Ltd., Rep.by Chief Manager

(Operation), (Operation)[Visakha-Vijayawada Pipe Line Project,

Visakhapatnam.

..... PETITIONER

VERSUS

$ Competent Authority and Dy.Collector, Vijayawada to Visakha

Vijayawada Pipe Line Project,HPCL Haranivas
D.NO. 15-2-22/1, Near IBP Century Club, and others.

.....RESPONDENTS

WRIT PETITION NO : 5947 of 2000

#Hindustan Petroleum Corporation Limited, Rep. by Chief Manager

(Operation), [Visakha-Vijayawada Pipe Line Project]

Visakhapatnam.

..... PETITIONER

VERSUS

$Competent Authority and Dy. Collector, Vijayawada to Visahka

Vijayawada Pipe Line Project,
HPCL Haranivas D.No. 15-2-22/1, Near IBP Century Club,
Beach Road, Vishakapatnam-2, and others.

.....RESPONDENTS

WRIT PETITION NO : 6050 of 2000

Hindustan Petroleum Corporation Limited, Rep. by Chief Manager

(Operation),
[visakha-Vijayawada Pipe Line Project], Visakhapatnam.

..... PETITIONER

VERSUS

$Competent Authority and Dy. Collector, Vijayawada to Vishaka

Vijayawada Pipe Line Project,

HPCL Haranivas D.No. 15-2-22/1, Near IBP Century Club,
Beach Road, Vishakapatnam-2, and others.

.....RESPONDENTS

WRIT PETITION NO : 6062 of 2000

Hindustan Petroleum Corporation Limited Rep. by Chief Manager(Operation)
(Visakha-Vijayawada Pipe Line Project) Visakhapatnam.

..... PETITIONER

VERSUS

$ Competent Authority and Deputy Collector Vijayawada to Vishaka Vijayawada Pipe Line Project
HPCL Haranivas D.No. 15-2-222/1, Near IBP Century Club, Beach Road,
Visakhapatnam-2, and others.

.....RESPONDENTS

WRIT PETITION NO : 6417 of 2000

Hindustan Petroleum Corporation Limited, Rep. by Chief Manager (Operation),

[visakha-Vijayawada Pipe Line Project], Visakhapatnam.

..... PETITIONER

VERSUS

$Competent Authority and Dy. Collector, Vijayawada to Vishaka Vijayawada Pipe Line Project,
HPCL Haranivas D.No. 15-2-22/1,l Near lBP Century Club,
Beach Road, Vishakapatnam-2, and others.

.....RESPONDENTS

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WRIT PETITION NO : 6418 of 2000

Hindustan Petroleum Corporation Limited, Rep. by Chief Manager (Operation), [Visakha-Vijayawada Pipe Line Project], Visakhapatnam.

..... PETITIONER

VERSUS

$ Competent Authority and Dy. Collector, Vijayawada to Vishaka Vijayawada Pipe Line Project,
HPCL Haranivas D.No. 15-2-22/1, Near lBP Century Club,
Beach Road, Vishakapatnam-2, and others.

.....RESPONDENTS

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! Counsel for Petitioners: Mr.P.B.Vijaya Kumar

^Counsel for Respondents: Mr.V.Mallik

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>HEAD NOTE:

? Cases referred

1. AIR 1964 SC 477 = (1964) 5 SCR 64
2. AIR 1984 SC 1447

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION Nos.6721, 5947, 6050, 6062, 6417

and 6418 of 2000

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Dated:02.12.2005

Writ Petition No.6721 of 2000

Between:

Hindustan Petroleum Corpn., Ltd., Rep.by Chief Manager

(Operation), (Operation)[Visakha-Vijayawada Pipe Line Project,

Visakhapatnam.

..... PETITIONER

AND

Competent Authority and Dy.Collector, Vijayawada to Visakha

Vijayawada Pipe Line Project,HPCL Haranivas
D.NO. 15-2-22/1, Near IBP Century Club, and others.

.....RESPONDENTS

WRIT PETITION NO : 5947 of 2000

Between:

Hindustan Petroleum Corporation Limited, Rep. by Chief Manager

(Operation), [Visakha-Vijayawada Pipe Line Project]

Visakhapatnam.

..... PETITIONER

AND

Competent Authority and Dy. Collector, Vijayawada to Visahka

Vijayawada Pipe Line Project,
HPCL Haranivas D.No. 15-2-22/1, Near IBP Century Club,
Beach Road, Vishakapatnam-2, and others.

.....RESPONDENTS

WRIT PETITION NO : 6050 of 2000

Between:

Hindustan Petroleum Corporation Limited, Rep. by Chief Manager

(Operation),
[visakha-Vijayawada Pipe Line Project], Visakhapatnam.

..... PETITIONER

AND

Competent Authority and Dy. Collector, Vijayawada to Vishaka

Vijayawada Pipe Line Project,

HPCL Haranivas D.No. 15-2-22/1, Near IBP Century Club,
Beach Road, Vishakapatnam-2, and others.

.....RESPONDENTS

WRIT PETITION NO : 6062 of 2000

Between:

Hindustan Petroleum Corporation Limited Rep. by Chief Manager(Operation)
(Visakha-Vijayawada Pipe Line Project) Visakhapatnam.

..... PETITIONER

AND

Competent Authority and Deputy Collector Vijayawada to Vishaka Vijayawada Pipe Line Project
HPCL Haranivas D.No. 15-2-222/1, Near IBP Century Club, Beach Road,
Visakhapatnam-2, and others.

.....RESPONDENTS

WRIT PETITION NO : 6417 of 2000

Between:

Hindustan Petroleum Corporation Limited, Rep. by Chief Manager (Operation), [visakha-Vijayawada Pipe Line Project], Visakhapatnam.

..... PETITIONER

AND

Competent Authority and Dy. Collector, Vijayawada to Vishaka Vijayawada Pipe Line Project,
HPCL Haranivas D.No. 15-2-22/1,l Near lBP Century Club,
Beach Road, Vishakapatnam-2, and others.

.....RESPONDENTS

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WRIT PETITION NO : 6418 of 2000

Between:

Hindustan Petroleum Corporation Limited, Rep. by Chief Manager (Operation), [Visakha-Vijayawada Pipe Line Project], Visakhapatnam.

..... PETITIONER

AND

Competent Authority and Dy. Collector, Vijayawada to Vishaka Vijayawada Pipe Line Project,
HPCL Haranivas D.No. 15-2-22/1, Near lBP Century Club,
Beach Road, Vishakapatnam-2, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION Nos.6721, 5947, 6050, 6062, 6417

and 6418 of 2000

COMMON ORDER:

The Petroleum and Minerals, Pipelines (Acquisition of Right of User in land) Act, 1962 (hereinafter called 'the Act') provide for the acquisition of right of user in land for laying pipelines for the transport of petroleum and minerals and for transporting petroleum or any mineral by the Government or the Government undertaking. Sections 3 to 6 of the Act lay down the procedure to acquire the right of user in any private land. In a nut shell, these provisions provide that whenever it appears to the Central Government that it is necessary for the transport of petroleum

from one locality to another, and for that purpose pipelines are to be laid, the Central Government may, by notification under the Official gazette, declare their intention to acquire the right of user in any land. On such notification, it shall be lawful for any authorized person to lay pipelines for transporting petroleum, and under Section 5 of the Act any person can raise objections for the same. After hearing the objections, a declaration is to be made under Section 6(1) of the Act, whereafter it shall be open to the State Government or any Corporation to lay pipelines, subject to the terms and conditions that may be imposed by the Central Government. As per Section 9 of the Act, whenever the right of the user is acquired by the Central Government, the owner or occupier of the land shall be entitled to use the land for the purpose for which such land was to be used immediately before publication of notification under Section 3(1) of the Act. Nonetheless, construction of any building, tank, well, reservoir or plantation of trees on the land shall not be permitted. Be that as it is, Section 10 of the Act provides for compensation and reads as under.

> **10. Compensation:-** (1) Where in the exercise of the powers conferred by Section 4, Section 7, or Section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.
>
> (2) If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, by determined by that District Judge.
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> (3) The competent authority, or the District Judge while determining the compensation under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of—
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> (i) the removal of trees or standing crops, if any, on the land while exercising the powers under Section 4, Section 7 or Section 8;
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> (ii) the temporary severance of the land under which the pipelines has been laid from other lands belonging to, or in the occupation of, such person; or
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> (iii) any injury to any other property, whether movable or immovable or the earnings of such persons caused in any other manner:

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of Section 3.

(4) Where the right of user of any land has vested in the Central Government, the State Government or the Corporation, as the case may be, shall, in addition to the compensation; if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market-value of that land on the date of the notification under sub-section (1) of Section 3.

(5) The market-value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to District Judge referred to in sub-section (2), be determined by that District Judge.

(6) The decision of the District Judge under sub-section (2) or sub-section (5) shall be final.

A plain reading of the above provision would show that if any person suffers damage, loss or injury in the laying of pipelines, he is entitled to claim compensation for such damage, loss or injury to be determined by the competent authority, who is a person authorized by the Central Government to perform the functions of the competent authority under the Act (see Section 3 of the Act). If the person is not satisfied with the compensation determined by the competent authority, he can make an application to the District Judge for determination of the compensation afresh and the discretion of the District Judge shall be final.

In these cases, the Government of India initiated procedure for acquiring the right to user of various persons of Gali Bheemavarm Village, Sabbavaram Mandal, Visakhapatnam for laying pipelines named as Visakhapatnam-Vijayawada pipeline for Hindustan Petroleum Corporation Limited (HPCL), the petitioner herein. The competent authority, the first respondent herein determined a sum of Rs.300/- per cent as a sum as compensation for damage, loss or injury. Not satisfied with the same, various persons filed PLOP No.1223/98 and batch on the file of the Court of the II Additional Judge, Visakhapatnam, who is competent under Section 10(2) of the Act. The owner of the land whose right of user was acquired for laying pipeline is arrayed as the third respondent in all the writ petitions.

In the Court of the District Judge the owner contended that the market value of the land in Gali Bheemavaram Village is more than Rs.80,000/- per acre, that the area

has gained importance due to increased construction activity, and that the amount of Rs.300/- per cent awarded by the competent authority as compensation is improper and illegal. The PLOPs were opposed by the petitioner herein. It was alleged that the competent authority has taken into consideration the registration statistics and valuation reports of authorized officials of Horticulture Department for assessing the value of the trees and the various crops damaged while laying pipelines, and therefore, the compensation awarded in a sum of Rs.300/- per cent is valid. On behalf of the claimants, the claimant alone was examined as P.W.1 (in every case) and the petitioner herein examined R.Ws 1 and 2, besides marking Exs.B.1 to B.14. The claimant, however, did not mark any documents, except exhibiting the notice received from the competent authority as Ex.A.1. On consideration of the evidence, the learned District Judge came to the conclusion that R.W.1, who is competent authority, did not inform the owners of the property while passing awards and that the petitioner herein did not produce any rebuttal evidence to deny the claim of Rs.800/- per cent and accordingly ordered the payment of compensation at the rate of Rs.800/- per cent. The learned District Judge also directed to pay a sum of Rs.500/- with costs of Rs.200/- to the owners, after giving due credit to the amount of Rs.300/- per cent, which was already paid by the petitioner herein. In these writ petitions the owners assail the various orders passed by the learned District Judge in various PLOPs. The Act does not provide any further appeal to the High Court.

The learned Counsel for the petitioner-Petroleum Company,
Sri Bhanu Prakash, representing Dr.P.V.Vijay Kumar, submits that the learned District Judge failed to consider the evidence produced by the petitioner, especially Exs.B.4, B.5 and B.8, which are copies of the award in related proceedings and therefore, the impugned orders are vitiated by grave error apparent on the face of record and are liable to be set aside. **Per contra,** the learned Counsel for the contesting respondents in all the writ petitions, Sri V.Mallik, submits that having regard to Section 9 of the Act, read with Section 10(4) of the Act, award of Rs.800/- per cent towards 10% of the market value is justified and the correct market value being the disputed question of fact, a writ of certiorari would not lie.

It is well settled that a writ of certiorari would be issued when the authority passing order suffers from inherent lack of jurisdiction known as error of jurisdiction and/or when such authority while considering the matter commits an error apparent on the face of record in appreciation of the fact, in appreciation of principles of law or applying wrong principles of law to the facts. Every error as such is not amenable to certiorari jurisdiction. A reference may be made to the decision of the Supreme Court in **Syed Yakoob v. K.S.Radha Krishnan** and **Jagdish Prasad v. Smt. Angoori Devi.**

In **Syed Yakoob v. K.S.Radhakrishnan** (supra) it was laid down as under.

> The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art.226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committee by inferior courts or tribunals; these are cases where orders are passed by inferior courts of tribunals without jurisdiction, or is in excess of it, or as a

> result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. **There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding.**

(emphasis supplied)

In **JagdishPrasad v. Smt.Angoori Devi** (supra) the Apex Court reiterated that the jurisdiction to issue a Writ of Certiorari is supervisory one and in exercising it, the Court is not entitled to act as a Court of Appeal and therefore the finding of facts arrived by an inferior Court or Tribunal are binding. The Court then referred to the case of **Syed Yakoob v. K.S.Radhakrishnan** (supra) and observed as under.

> In the case of *Syed Yakoob v. K.S.Radha Krishnan* [(1964) 5 SCR 64 : AIR 1964 SC 477) a Constitution Bench of this Court indicated the scope of interference in a certiorari proceeding by saying that a writ of certiorari is issued for correcting the errors of jurisdiction committed by the courts or tribunals in cases where they exceed their jurisdiction or fail to exercise it or exercise it illegally or improperly i.e., where an order is passed without hearing the party sought to be affected by it or where the procedure adopted is opposed to principles of natural justice. A caution was indicated by saying that the jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the court is not entitled to act as a Court of Appeal. That necessarily means that the findings of fact arrived at by the inferior court or tribunal are binding. An error of law apparent on the face of the record could be corrected by a writ of certiorari but not an error of fact, however, grave it may appear to be. The rule in Yakoob's case (AIR 1964 SC 477) when applied to the present facts would lead to the conclusion that the High Court exceeded its jurisdiction in interfering with the order of the Additional District Judge.

In view of the settled legal position and even if the High Court comes to the conclusion that a finding of fact is not correct in the opinion of the Court, still a Writ of Certiorari cannot be issued. All errors in recording finding of facts are not amenable to jurisdiction. It is only grave errors apparent on the face of record which require correction by the exercise of certiorari jurisdiction.

At this stage, it is necessary to consider the scope of enquiry while determining the compensation under Section 10(3) of the Act, either by the competent authority or by

the District Judge. Sub section (3) of Section 10 of the Act contains guidelines for determination of compensation. The compensation for damage or loss sustained by a person has to be assessed with reference to (i) the removal of trees or standing crops; (ii) temporary severance of the land under which the pipelines have been laid and (iii) any injury to any other property whether movable or immovable. The Act provided for acquiring the right of user, and Section 9(1) of the Act still enables the owner or occupier on the land to use the land for the same purpose for which it was used before laying the pipelines. Therefore, ordinarily, there is no divesting of title and the Central Government acquires the right of user for laying pipelines which is always with reference to sub-soil rights of the owner on which, in common law the owner has no right. The sovereign alone has rights with regard to sub-soil benefits. Therefore, the Parliament has taken care while enacting Section 10 of the Act and requires competent authority or District Judge to determine the compensation having regard to the damage or loss caused to the right of user of the owner or occupier. There could be a situation where the entire land itself is acquired by the Government or the appropriate authority for petroleum works or for constructing petroleum storage facilities, in which case the provisions of the Act have no application. A further reading of Section 10(1), (2) and (4) of the Act together, it becomes abundantly clear that where the right of user of any land is vested in the Central Government, the owner or occupier is entitled to claim compensation which would be at 10% of the market value on the date of notification. Sub-section (3)(i) of Section 10 of the Act is to a limited extent. Therefore, the market value of the land is a determining factor, but the same cannot be the entire basis for such determination. The basis for determination as noticed supra is provided in Sub-section (3) of Section 10 of the Act. In the present case a reading of the impugned orders would show that the lower Court adverted to determination of the market value, but did not determine the loss or damage caused to each owner or occupier with reference to the factors contained in Section 10(3) of the Act. Secondly, the learned District Judge relied on the evidence of PW.1, ignoring Exs.B.4, B.5 and B.8, without even making reference to them. Thus, a grave error apparent on the face of record is occurred in the impugned orders, by reason of non-consideration of the correct principles of law as well as valid and relevant documents. The impugned orders are therefore, unsustainable.

Unlike in Land Acquisition Act, 1894 (for short ‘the LA Act’) there is no provision akin to Section 54 of the LA Act in the present Act. In view of this it would not be proper for this Court to proceed with redetermination of the compensation as is done in the Land Acquisition proceedings. It would be in the interest of the parties to remit the matter to the Court of the II Additional District Judge, Visakhapatnam, for a fresh disposal of the matter keeping in view the principles contained in Section 10 of the Act.

Accordingly, these writ petitions are allowed and the impugned orders are set aside, and all the matters are remitted to the Court of the II Additional District Judge, Visakhapatnam, with a direction to give liberty to the petitioner herein and the contesting third respondent (owner/occupier) to lead further evidence, if any, and dispose of the matters within a period of eight weeks from the date of receipt of a

copy of this order. There shall be no order as to costs.

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(V.V.S.RAO, J)

02.12.2005

vs